

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

KENT L. OWENS,

Defendant and Appellant.

A146389

(Alameda County  
Super. Ct. No. H-27044)

This is an appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). On March 2, 2000, following entry of his plea,<sup>1</sup> defendant Kent L. Owens was convicted of second degree burglary. The court sentenced defendant to state prison for the upper term of 10 years, and imposed a ten-year firearm enhancement (Pen. Code,<sup>2</sup> § 12022.53), together with two five-year enhancements for prior serious or violent felonies (§ 667, subd. (a)), plus two one-year enhancements based on his two prior prison terms (§ 667.5, subd. (b)), for a total of 32 years in state prison.

More than 15 years later, on August 7, 2015, defendant, acting in propria persona, filed a motion for modification of sentence under section 1170, subdivision (d). The basis for the motion was defendant's "rehabilitation" and participation in "extensive programs." In support of the motion, defendant attached numerous exhibits that depicted his exemplary conduct in prison.

---

<sup>1</sup> It is unclear from the record if defendant entered a guilty plea or a no contest plea.

<sup>2</sup> All further undesignated statutory references are to the Penal Code.

On August 31, 2015, the trial court denied defendant's motion on the grounds that it lacked jurisdiction to modify defendant's sentence. In so ruling, the court explained that the criminal proceedings had concluded and the judgment was final.

Defendant appeals. We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Once judgment is rendered, the sentencing court is without jurisdiction to vacate or modify the sentence, except pursuant to the provisions of section 1170, subdivision (d). (See *Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1834-1835.) The statutory exception allows a sentencing court, on its own motion, to recall and resentence, subject to the express limitation that the court loses such jurisdiction if it fails to recall a sentence within 120 days of the original commitment. (See *Dix v. Superior Court* (1991) 53 Cal.3d 442, 464.)

Here, in 2000, the court sentenced defendant to a 32-year prison term. In 2015, defendant filed his motion to modify his sentence. As properly determined by the trial court, it lacked jurisdiction under section 1170, subdivision (d) to act upon defendant's motion to modify his sentence.

"[S]ince . . . the trial court no longer had jurisdiction to recall [defendant's] sentence when it issued the order denying his motion, denial of the motion could not have affected [defendant's] substantial rights." (*People v. Chlad* (1992) 6 Cal.App.4th 1719, 1726.) Thus, the order from which defendant appeals is not an appealable order and the appeal must be dismissed. (*Ibid.*)

#### **DISPOSITION**

The appeal is dismissed.

---

Reardon, Acting P.J.

We concur:

---

Rivera, J.

---

Streeter, J.